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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C 20460

OCT 12 2016

OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Chairman Inhofe:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Committee's Questions for the Record following the July 13, 2016, hearing titled "Oversight of U.S. Environmental Protection Agency Enforcement and Compliance Programs."

If you have further questions, please contact me or your staff may contact Carolyn Levine in EPA's Office of Congressional and Intergovernmental Relations at levine.carolyn@epa.gov or (202) 564-1859.

Sincerely,

Nichole Distefano
Associate Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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The Honorable Barbara Boxer
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Boxer:

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U.S. Environmental Protection Agency
Responses to Questions for the Record
Hearing: "Oversight of U.S. Environmental Protection Agency Enforcement and Compliance Programs"
Subcommittee on Superfund, Waste Management, and Regulatory Oversight
U.S. Senate Committee on Environment and Public Works
Wednesday, June 29, 2016

Chairman Inhofe:

1. According to the Environmental Council of States (ECOS), states conduct about 90% of enforcement cases and conduct 96% of inspections. Since assuming your position in 2009, what has your office done to improve EPA's relationship with state regulators on enforcement and compliance work?

Response: The EPA recognizes the critical role of state, local, and tribal environmental agencies in implementing environmental statutes, and the important work states do to evaluate compliance and address violations to protect human health and the environment. The agency has and continues to routinely engage with states to work collaboratively to achieve shared public health and environmental goals. EPA regions meet regularly and work with each of the states in their geographic area on enforcement and compliance monitoring, coordination and work-sharing expectations.

The EPA also works closely with ECOS, which has been invaluable in providing leadership and a constructive venue for advancing our shared goals. The EPA actively participates in national ECOS meetings and numerous workgroups including the Compliance and Enforcement Committee. The EPA's collaboration with states through the E-Enterprise Leadership Council, established in 2014 to modernize environmental programs, has provided an extremely productive venue to work together with states on a number of efforts to design, modernize and improve environmental protection including enforcement. One area where the agency is working with ECOS and the states is the development of improved tools for federal and state inspectors. For example, the agency is developing mobile tools for field inspectors which will support inspections and improve the quality and consistency of inspections.

Another area where the EPA's Office of Enforcement and Compliance (OECA) has worked closely with ECOS and individual states since 2008 is in the development of the final National Pollution discharge Elimination System (NPDES) Electronic Reporting Rule, which will modernize the reporting system for water permits, improve compliance, and reduce costs for regulated facilities and regulatory agencies.

Our work with states on enforcement issues is continuous. The EPA is currently working with ECOS to assess state compliance and enforcement training needs, identify available training, and look for opportunities to expand the range of training available and enhance access to these trainings.

2. Your office develops National Enforcement Initiatives (NEI) every three years to focus Agency enforcement resources. Your website states that "[t]he initiatives are chosen with input from the public and from stakeholders across EPA's state, local and tribal agency partners." However, public comments submitted on the most recently proposed NEI expressed concerns over EPA's failure to consult with state partners earlier in the process for developing the NEI.
    a. What is EPA's process for developing and finalizing the NEI? Please describe any intra-agency consultation within EPA headquarters and/or regions as well as interagency consultation with other federal agencies and offices.
    b. Outside of the notice-and-comment process, what steps has your office taken to seek public and state, local and tribal input when developing a proposed NEI?

Response: The EPA process for NEI's includes a solicitation for ideas and recommendations for NEIs from states and tribal governments, a proposal for the NEIs which is published and includes a public comment period, a series of discussions with stakeholders, and then a final selection. The process of developing and finalizing the FY 2017-2019 NEIs began in June of 2014 and continued through February of 2016. In 2014, as part of the process of developing the FY 2016-2017 National Program Manager Guidance, the EPA sought comments and suggestions from states, tribes and the public for the FY 2017-2019 NEIs. In 2015, the EPA published the Federal Register Notice titled: "Public Comment on EPA's National Enforcement Initiatives for Fiscal Years 2017-2019" which provided additional information on potential new initiative areas and sought comments from the public on the potential initiatives. The EPA then conducted a series of consultation calls with states, state associations, and tribal governments in 2015 to specifically discuss the selection of NEIs. The NEIs were then finalized in 2016.

3. EPA's recently finalized NEI does not include any response to public comments on the proposed NEI, which suggests EPA does not meaningfully consider public comments on the proposed NEI.
    a. Why has EPA not responded to public comments in its final NEI?
    b. Has EPA considered developing a Response to Comments document for the NEI?
    c. What steps has your office taken during your term to ensure public comments on a proposed NEI are considered?

Response: When publishing non-rulemaking Federal Register Notices seeking comment or information, the agency assesses whether to provide a Response to Comments document on a case-by-case basis. In this case, the Federal Register Notice noted that the EPA would not be providing responses to the comments received. The EPA considered all public comments received in response to the Federal Register Notice (Docket EPA-HQ-OECA-2015-0628), as well as public comments related to NEIs that were received through the NPM Guidance development process. The EPA also considered additional comments that were received during calls soliciting input on NEIs from states, state associations, and from tribes through consultation calls.

The agency received comments from a diverse array of stakeholders through the above processes. Generally, comments received from private citizens expressed support for

continuing the existing NEIs, while many of the comments from states and state associations focused on their need for EPA's cooperation, enforcement support, and flexibility. Industry comments largely requested that the EPA ensure that its enforcement work is helping to ensure a level playing field, and protect responsible businesses that comply with the law. The NEIs selected for FY 2017-2019 reflect these comments.

4. The recently finalized NEI retained four initiatives, added two new initiatives, and expanded one to include a new area of focus.
    a. What factors does EPA consider when developing the NEI?
    b. How does your office consider upcoming rulemakings impacting the initiatives and areas being considered for the NEI?
    c. What, if any, quotas/metrics are utilized to determine the value of such initiatives? Are the same quotas/metrics used across the initiatives and areas? How have these quotas/metrics changed throughout your term?
    d. How does EPA define "success" for the NEI (i.e. what is the threshold for an area or initiative to be removed from NEI)?
    e. Is there any authority (e.g. statutory, guidance, or policy) preventing EPA from removing or adding an initiative or area prior to the NEI's expiration?
    f. Are there any limitations on the number of initiatives or areas to be included on the NEI (i.e. does EPA have a minimum number or an upper-bound limit)?

Response: Every three years, the EPA selects NEIs to address specific environmental problems, risks, or patterns of noncompliance. These initiatives are reevaluated every three years in order to ensure that federal enforcement resources are focused on the most important environmental problems where noncompliance is a significant contributing factor, and where federal enforcement attention can have a significant impact. Along with consideration of the public comments received when developing the FY 2016-2017 NPM Guidance and the Federal Register Notice, these factors were critical in the agency's selection of the FY2017-2019 NEIs. In addition, from FY 2014 to FY 2016, extensive analysis was conducted using publically-available environmental, compliance and enforcement data (including data from the EPA enforcement and compliance databases, the Enforcement and Compliance History Online (ECHO), the National Emissions Inventory, the Toxics Release Inventory, the Risk Management Plan (RMP) database, and water pollution discharge data) to examine NEI options and proposals.

The EPA posts detailed information on the NEI website: (https://www.epa.gov/enforcement/national-enforcement-initiatives) about the activities and annual progress made under each NEI, such as the numbers of inspections conducted, numbers of facilities addressed, the enforcement actions taken, and the pollution reductions achieved. From FY 2011 through FY 2015, the NEIs accounted for over 75% of the injunctive relief, 45% of the pounds of pollutants reduced, 75% of the hazardous waste reduced, and almost 100% of untreated discharge reduced that has been secured through all of EPA's enforcement actions during that time period.

The number of industry sectors selected as an NEI is discretionary. Changes to the NEIs will occur over time. The EPA may return an initiative to the base enforcement program level

when the agency determines sufficient compliance progress has been made with the sector to warrant this action. For example, the Mineral Processing NEI will be discontinued beginning in FY 2017.

5. It seems EPA develops the NEI to target reductions of specific pollutants. For example, Reducing Air Pollution from the Largest Sources initiative targets NOx and SO2, Cutting Hazardous Air Pollutants initiative targets HAPs, Reducing Pollution from Mineral Processing initiative targets metals, and Reducing Risks of Accidental Releases at Industrial & Chemical Facilities initiative targets hazardous substances. However, EPA does not list a specific pollutant for the Energy Extraction Enforcement Initiative.
    a. What is the goal of the Energy Extraction Enforcement Initiative in terms of specific pollutant reductions and ultimately air-quality benefits? What is the goal for both the upstream exploration and production sector nationally, as well as within delegated states and air districts? How is this goal working with existing permitting/compliance demonstration approaches in delegated air programs in states and air districts?
        i. If EPA does not have such a goal, how does EPA distinguish this initiative from the other initiatives that target specific pollutants?
    b. How has EPA determined compliance (i.e. associated reduction in pollution or reduced enforcement actions) for this initiative in the past?
        i. Has EPA used the same analogous structure/approach for compliance in the Energy Extraction Enforcement initiative (i.e. are the same parameters, metrics/measurements from other NEIs being utilized for Energy Extraction/upstream sector initiative to measure analogous results)? If not, why?

Response: The NEIs address specific industry sectors and focus on reducing environmental pollution at regulated facilities within the targeted industry sectors. The goal of the multi-media Energy Extraction NEI is to work with state agencies to ensure that domestic onshore natural gas extraction and production activities are conducted in a way that protects public health and the environment and complies with applicable laws including the Clean Air Act (CAA) and the Clean Water Act. For example, the EPA seeks to identify and address surface water and groundwater impacts that may result from wastewater spills or NPDES violations. Under the CAA, the EPA assesses compliance with CAA requirements such as New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), State Implementation Plan/Federal Implementation Plan (SIP/FIP) provisions, permit requirements, and General Duty Clause/Risk Management Plan requirements. Air pollutants of specific concern include, but are not limited to, volatile organic compounds (VOCs) and hazardous air pollutants.

6. Under the "Reducing Air Pollution from Largest Sources" NEI, EPA states specific reductions in NOx and SO2 for the specific manufacturing of cement, glass, and acids. These operations appear to be well defined.
    a. Can/how does EPA define the scope of facilities included under the Energy Extraction Initiative?

b. Can you give any clarity to what types of facilities have been under its enforcement actions?
c. Are facilities that are not energy companies included in the number of enforcement cases under this initiative? Does EPA include enforcement actions on ancillary operations for other initiatives that focus on a business sector?
d. Does your office include enforcement actions on landfills that accept animal waste, or are those numbers strictly tied to the objective of looking at concentrated feeding operations?

Response: The Energy Extraction NEI assesses compliance and addresses non-compliance with applicable laws and regulations at onshore natural gas exploration and production facilities, as well as those that handle exploration and production wastes. Facilities that have been assessed and addressed under the NEI include natural gas well sites, processing plants, and wastewater treatment and /or disposal facilities.

Disposal of wastes in landfills are governed and enforced by states, not the EPA, under Subtitle D of the Resource Conservation and Recovery Act (RCRA). The EPA does have a separate NEI that relates to addressing pollution violations at concentrated animal feeding operations.

7. The Energy Extraction Enforcement Initiative has been included in the last three NEIs. In light of all the new, proposed and existing state and federal regulations affecting compliance and air emissions reduction within the energy extraction sector—a number of which were finalized after EPA issued the NEI for FY2017-2019—how long does your office envision the need to include this sector in the NEI?
    a. If the NEI has been used to help informally develop the recently promulgated regulations for the oil and gas sector, how does your office justify maintaining this sector on the NEI going forward?

Response: The EPA will assess whether to continue the Energy Extraction NEI as part of the planning process, which includes an opportunity for our co-regulators in state, local, and tribal governments as well as the public to comment on the NEIs, when evaluating the FY2020-2022 NEI cycle.

8. The EPA recently issued a proposed Information Collection Request (ICR) from oil and gas operators under Section 114 of the Clean Air Act that is currently open for public comment. What was your office's role in developing this ICR?
    a. Is this ICR part of your office's Energy Extraction NEI?
    b. What is the reason for the collection of this information?
    c. What is EPA planning to do with this information? How will your office use this information for enforcement purposes?

Response: The recent proposed ICR for oil and gas operators was not issued by OECA and is not part of the Energy Extraction NEI. The EPA issued a draft ICR to require oil and natural gas companies to provide extensive information needed to develop regulations to reduce methane emissions from existing oil and gas sources. The draft ICR is a critical step toward

meeting the Obama Administration's commitment to reduce emissions from existing oil and gas sources, as part of the President's *Climate Action Plan: Strategy to Reduce Methane Emissions*. The draft ICR seeks a broad range of information that will help the agency determine how to best reduce emissions. This includes information on how equipment and emissions controls are, or can be, configured, and what installing those controls entails and the associated costs. These types of information will help the EPA determine how the agency can, working with states, best develop and apply standards to effectively reduce emissions from existing sources. It also will help identify sources with high emissions and the factors that contribute to those emissions. The information that the EPA receives will build on what state and other federal agencies have learned through their own rules, programs and experiences.

The ICR process, which is governed by the Paperwork Reduction Act, provides the public two opportunities to review drafts of the information collection request. The draft ICR was published on June 3, 2016, and the first of two public comment periods lasted for 60 days. The agency may revise the first draft as necessary based on comments and then publish a second draft which will also be submitted to the Office of Management and Budget (OMB) for review. If the collection request– which can include surveys and required emissions monitoring – is approved by OMB, the survey will then be sent to industry, which will be required to respond and attest that the information is accurate. The EPA's goal is to receive the first phase of information this year.

More information on the draft ICR is available at:
https://www3.epa.gov/airquality/oilandgas/methane.html

9. The Energy Extraction Enforcement Initiative has been included in the last three NEIs, which resulted in nearly 3,200 inspections with 194 enforcement actions according EPA. This is low enforcement rate, an average 5 to 6%, compared to other initiatives, such as the Keeping Raw Sewage out of Our Nations Waters initiative, which has an enforcement rate around 11%, and other initiatives have higher rates.
    a. How does your office justify continued targeting of the Energy Extraction sector when EPA data shows an average 95% compliance rate over the last five fiscal years?
    b. How does this low enforcement rate for Energy Extraction align with EPA's "Next Gen Enforcement Policy" that proclaims smart and innovative enforcement that utilizes data to support the need for enforcement?

Response: Calculating the overall compliance rate for this sector would require a more detailed analysis than dividing the number of enforcement actions by the number of inspections/compliance evaluations conducted. Currently, there are more than 500,000 facilities that may be covered by the initiative. To calculate an overall compliance rate for this industry would require a significantly larger investment with inspections/compliance evaluations at a much larger universe of sources than the current agency effort. Due to the size of the universe, the wide distribution of regulated sources, and the potential public health and environmental impacts, the agency is focusing agency resources on the most critical potential health and environmental concerns.

10. Based on your January 2015 Next Generation Compliance enforcement memo, it seems EPA is targeting prioritized sectors.
    a. Could you please provide an overview of recent enforcement actions targeting emissions from the upstream energy sector and the terms of ensuing consent decrees?
    b. I also understand that certain regions have developed quotas to use the Resources Conservation and Recovery Act's "imminent and substantial endangerment authority" for a number of oil and gas locations. Could you please explain more about this (e.g. those in EPA's Region 8)?
    c. To what extent are these enforcement actions being coordinated with other federal agencies, including the Pipeline and Hazardous Materials Safety Administration, the Occupational Safety and Health Administration, and the U.S. Fish and Wildlife Service?

Response: The agency's effort to promote the use of Next Gen includes promoting the use of new technologies which will more effectively help regulated facilities maintain compliance. This is not targeted towards a particular sector but rather is an approach that is encouraged for companies that are willing to use such technologies in various sectors. For example, in a 2015 settlement with Noble Energy, Inc., Noble Energy agreed to use technologies available for fence line monitoring.

There is no quota for using RCRA "imminent and substantial endangerment authority" for oil and gas locations. If the EPA discovers conditions in the field that may be of concern for another federal agency, the EPA shares that information with the agency and coordinates as appropriate.

11. Early in your term, your office added the Energy Extraction NEI. Since then, your office has reported more than 3,000 inspections demonstrating 94% compliance, EPA has retracted three high-profile investigations into hydraulic fracturing, and EPA issued a national study on hydraulic fracturing finding no "widespread, systematic impacts" to drinking water supplies. Given all these factors, how does your office justify again listing energy extraction on the most recently finalized list of NEIs for FY2017-2019?

Response: As discussed in response to Question 9, the number of enforcement actions relative to – or divided by – the number of inspections and evaluations does not provide the enforcement / compliance rate. Natural gas extraction and production is projected to continue to grow in the U.S. for the next several decades. Natural gas extraction and production activities present potential health and environmental risks to air quality, groundwater and surface water quality, and public and private water supplies. To minimize these impacts, it is important that the agency continues to monitor this industry and utilize our compliance and enforcement expertise to ensure that this natural resource is developed in a manner that is environmentally protective and in compliance with existing environmental requirements.

12. At the hearing, I asked about EPA's requests for information letters per Section 114 Clean Air Act, and using the data received in response for an enforcement action. In

some instances, I am aware of EPA issuing multi-billion dollar fines that effectively intimidate companies into signing consent agreements creating de facto regulations and imposing requirements that EPA could not otherwise mandate through the Agency's existing authorities.

a. How can EPA justify scaring American businesses with astronomical fines for actions that in many instances have not been violating existing EPA regulations?
b. How can EPA justify such actions, which essentially write new rules for the industry, under these settlement agreements without following the legal procedures required to do issue new rules?

Response: The EPA seeks penalties consistent with statute-specific requirements and policies to ensure general consistency across enforcement actions in the EPA regions and headquarters. There have been no multi-billion dollar penalties as part of the Energy Extraction NEI. Consistent with its statute-specific policies, the EPA seeks penalties that recover any economic benefit gained as a result of noncompliance with existing regulations to ensure a level playing field between those operators that comply with the law and those that violate the law.

13. I've heard reports of your office requiring companies to take new regulatory action, such as installing certain emissions control technology, under the auspice of enforcement. This often leads to inconsistencies across industries, which is not only unfair but lacks transparency and circumvents the rulemaking process.

a. Do you consider your enforcement authority as an easier, less time consuming approach to get companies to take new actions than the rulemaking process, which would provide more time for public notice and input and require sound science and economic justification for new regulatory actions?

Response: No. As mentioned in response to the prior question, EPA's enforcement actions seek relief intended to ensure compliance with existing regulatory requirements.

14. EPA's recent air enforcement efforts aimed at upstream oil and gas operators in North Dakota and elsewhere would seem to require that each operator engage in lengthy and expensive design evaluations of their facilities that are not expressly required by current regulations. In fact, the regulations in question for North Dakota operators only require that emission control devices be sized properly so as to control vapors that might otherwise be emitted by oil and produced water storage tanks. On what basis does EPA justify the interpretation of a general obligation of this type to force an entire industry to change its designs, in effect to change the standards of the industry itself?

a. Doesn't EPA have technology-forcing authority to require this sort of wholesale re-evaluation of an industry's facility designs that would be required to go through the transparent and public process of notice and comment rulemaking, if shown to be cost-effective?
b. Why is EPA attempting to change technology and facility design through enforcement, rather than through rulemaking, as it should?
c. If an industry design standard that must satisfy both safety and environmental performance concern is to be changed or tightened, isn't rulemaking the best way

to accomplish that for all affected operators, so as to be scrutinized on the administrative record for cost-effectiveness, achievability and other appropriate, objective factors?

Response: As stated in response to the prior questions, EPA's enforcement actions seek relief intended to ensure compliance with existing, federally-enforceable regulatory requirements.

15. Isn't it true the States really get stuck with the job of administering the program, permitting and enforcement, after EPA is done with its one-off enforcement efforts that make hay of an already complex regulatory scheme? To what extent has EPA engaged state regulatory partners in evaluating the industry's compliance, and how have you consulted with them regarding their opinions of compliance/regulatory interpretations, etc.? How has/does EPA understand and integrate permitting/compliance approaches of delegated air programs (states and air districts) in advance of generating and distributing Section 114-information request letters? Are the states/air districts notified of potential letter recipients in advance and allowed to generate feedback/discussion on those selected recipients?

Response: The EPA's mission is to protect both human health and the natural environment across the varied national landscape by ensuring compliance with the environmental laws under 11 statutes. As mentioned above, the EPA recognizes the critical role of state, local, and tribal environmental agencies in implementing environmental statutes, and the important work states do to evaluate compliance and address violations to protect human health and the environment. The EPA has and continues to routinely engage with states to work collaboratively to achieve shared public health and environmental goals.

The EPA often has the dual role of maintaining a federal enforcement program while promoting effective state, local and tribal enforcement. The EPA's ten regional offices, together with state, local, and tribal partners, monitor compliance through inspections of facilities and other activities to gather compliance-related information. In all cases, the EPA's objective is to secure compliance with the law in order to protect the environment and to safeguard communities from exposure to unhealthy pollutants and to ensure a result that is fair – to the defendant, the defendant's competitors, and the public affected by the violations.

The EPA routinely meets with its regulatory partners to discuss issues of mutual concern, and provides them guidance, inspection tools, training, and technical assistance for compliance monitoring activities. In addition, the EPA responds to written inquiries from the regulated community as well as delegated state/local agencies about the broad range of NSPS and the NESHAP regulatory requirements under the CAA. These inquiries pertain to site-specific applicability determinations and alternative monitoring and testing decisions, and to regulatory interpretations that provide guidance to a whole source category or on a broad range of NSPS and NESHAP regulatory requirements. These EPA-issued determination letters and memoranda are compiled on the EPA Applicability Determination Index (ADI) website, which can be readily accessed by the public at the following address: https://www.epa.gov/compliance/clean-air-act-caa-compliance-monitoring. These

determinations provide national consistency and facilitate state/local determinations on similar issues.

As to CAA section 114 information request letters, 114 information requests are one of the tools the EPA uses to investigate potential non-compliance with the environmental laws. The agency does not notify states in advance of issuing a 114 information request, however, the EPA routinely partners with the states when conducting inspections and states frequently join the EPA as co-plaintiffs in enforcement actions.

16. We have heard reports of companies with operations in different EPA regions receiving different levels of EPA enforcement. What is your office doing to promote consistency across EPA regions when it comes to enforcement?

Response: The EPA recognizes that unique or differing circumstances may be faced by different members of the regulated community. Enforcement actions for the same type of violation that may result in different penalties do not necessarily indicate an inconsistency or disparity. For example, a lower penalty may reflect mitigation or supplemental environmentally beneficial project that a settling party has agreed to undertake, or that one party was a small business whose financial resources were taken into account as provided by policies for determining penalties. A higher penalty could reflect exacerbating circumstances, such as the duration of the violation or the severity of any environmental damage that resulted from the violation.

Most EPA programs are implemented by the ten regional offices, with headquarters maintaining responsibility for national oversight and direction. The regions work with their state, local and tribal counterparts to ensure that EPA's work, as appropriate, complements state and tribal environmental priorities. The enforcement program uses statute-specific policies and guidance to address compliance monitoring, enforcement responses to violations, and penalty assessment both to ensure consistency across the regions while allowing for sufficient discretion to address regional- and case-specific circumstances.

17. In these Section 114 enforcement actions, the EPA has used the FLIR digital imaging camera to detect fugitive hydrocarbon emissions and to thereby declare those facilities with these fugitive emissions so detected, out of compliance. I understand the accuracy of these cameras is affected by weather conditions and can be subject to various sensitivity settings. These cameras will yield neither a quantitative nor a qualitative result, and are very subjective. In fact, some state agencies will not allow the use of these cameras for demonstration of compliance. Given these limitations, why does the EPA use these digital imaging cameras for compliance monitoring?

Response: It is important to distinguish between the use of equipment to screen for regulated pollutant emissions, and the use of equipment to identify violations and make compliance determinations. Infrared cameras can be a very effective screening tool in identifying potential excess emissions and in certain circumstances can be used for compliance monitoring, for example, where state and/or federal standards require emissions to be captured and controlled. The current generation of FLIR cameras can visually detect releases

of pollutants that would otherwise be invisible to the naked eye. As a result, they are valuable in identifying where a leak appears to be occurring. Once a leak is identified, other appropriate equipment is used to measure the emissions and determine whether a violation has occurred based upon the underlying regulatory and/or permit requirements.

18. Data released recently by National Oceanic and Atmospheric Administration revealed that global methane concentrations have not been increasing as has been proclaimed recently. This same data also revealed that fossil fuel production, (i.e. oil and gas) is not the main source of global methane. Rather, the main source is tropical wetlands and the biogenic process associated with biological decay. Yet, EPA has targeted the oil and gas industry for methane emissions. How does your office justify such enforcement measures?
    a. Why does EPA persist in regulating methane as a pollutant when it is not a source of global methane nor is it a pollutant that is one of the precursors to photochemical ozone formation?

Response: Methane is the key constituent of natural gas and has a global warming potential more than 25 times greater than that of carbon dioxide. Methane is the second most prevalent greenhouse gas emitted by human activities in the U.S., and approximately one-third of those emissions come from oil production and the production, processing, transmission and storage of natural gas. In addition to its impact on climate change, methane emissions from the oil and gas industry come packaged with other pollutants: VOCs, which are a key ingredient in ground-level ozone (smog); and a number of pollutants known as "air toxics" – in particular, benzene, toluene, ethylbenzene and xylene. Ozone is linked to a variety of serious public health effects, including reduced lung function, asthma attacks, asthma development, emergency room visits and hospital admissions, and early death from respiratory and cardiovascular causes. Air toxics are known or suspected to cause cancer and other serious health effects. The NOAA study (Schaefer et al. 2016), does show that fossil fuel production is a source of methane. It also shows that microbial sources, including wetlands, are sources for the increase in the rate at which global methane concentrations have been rising since 2007.

However, this does not imply that fossil fuels do not contribute to rising global methane concentrations. Also, given the global scale of the study, the conclusions cannot be applied to estimates and trends of methane emissions from the U.S. oil and gas sector, which represent a fraction of the global total of anthropogenic and non-anthropogenic emissions assessed by the study. Many recent U.S.-based studies, including those by NOAA, confirm that U.S. oil and gas systems emit large quantities of methane.

The collective GHG emissions from the oil and natural gas source category are significant, whether the comparison is domestic (where this sector is the largest source of methane emissions, accounting for 32 percent of U.S. methane and 3.4 percent of total U.S. emissions of all GHGs), global (where this sector, while accounting for 0.5 percent of all global GHG emissions, emits more than the total national emissions of over 150 countries, and combined emissions of over 50 countries), or when both the domestic and global GHG emissions comparisons are viewed in combination. Consideration of the global context is

important. GHG emissions from U.S. oil and natural gas production and natural gas processing and transmission will become globally well-mixed in the atmosphere, and thus will have an effect on the U.S. regional climate, as well as the global climate as a whole for years and indeed many decades to come.

No single GHG source category dominates on the global scale. While the oil and natural gas source category, like many (if not all) individual GHG source categories, could appear small in comparison to total emissions, in fact, it is a very important contributor in terms of both absolute emissions, and in comparison to other source categories globally or within the U.S.

In addition, in the U.S., methane emissions from oil & gas operations are projected to increase by about 25% over the next decade if additional steps are not taken to reduce emissions from this rapidly growing industry.

More information on the justification for EPA's actions to regulate methane from the oil and gas industry can be found at: https://www3.epa.gov/airquality/oilandgas/actions.html

19. EPA's Enforcement and Compliance History Online database, known as "ECHO", contains data on the compliance history of hundreds of thousands of facilities in the U.S. Unfortunately, ECHO has had a history of errors that the agency has been working on that can create reputational issues for individual companies. For instance, errors in the inputted state data were often "frozen" in the ECHO database for a full year even though states pointed out the errors to EPA at the time the data were frozen. This includes simple errors such as the double counting of violations.

a. Can you explain why EPA could not correct errors in the data in a timelier manner? What steps has EPA taken to address this problem?
b. Is there now a way to correct data without waiting for the year to end?

Response: EPA, state, local, and tribal regulatory agencies report compliance and enforcement data into the EPA national data systems of record for the media-specific programs (e.g., air, water, hazardous waste). This data is then imported to ECHO for purposes of public access. Given the number of different reporting agencies and entities and the volume of information reported, the overall error level is low. For example, in 2015, there were a total of 800,000 facilities in ECHO and 542 errors were reported.

To maintain this level of data accuracy, the EPA works collaboratively with our state, tribal and local regulatory partners. The EPA has a network of approximately 300 data stewards from the regulatory agencies to ensure data quality and respond to data concerns as they arise. To supplement this network for addressing data concerns, the EPA recently enhanced ECHO to update the data on a weekly basis which helps to ensure that data corrections in the underlying media-specific national data systems are reflected in ECHO in a more timely manner.

Although the primary portion of ECHO works on a weekly refresh, the State Review Framework and ECHO State Dashboards work on yearly data sets where snapshots (referred to as a data freeze) of the data systems of record are taken approximately four months after

the end of the federal fiscal year. The EPA typically does not update that data set as it is intended to represent static and unchanging data that can be used to support stable trend analysis and audits.

The ECHO State Dashboards display state-aggregated performance metrics that relate to compliance with and enforcement of environmental standards. Several of the dashboards allow for drilling-down into the aggregate data to see facility-level metrics. Prior to the data freeze, regulatory agencies are provided with a lengthy review period as part of the data verification process. This review process is supported by ECOS.

20. Other complaints with ECHO include the fact that minor paperwork errors are often listed as violations. Most facilities have to comply with numerous regulations each of which may require multiple reports to demonstrate compliance. The end result may be thousands of data entries on an annual basis. Not surprisingly, many of the non-compliance items involve problems filling out or filing the reports. For instance, one of the violations listed as significant for the Texas Municipal Power Agency was a form that contained all the correct information but in the wrong places.

a. How is EPA working to allow data entry violations to be distinguished from real violations?
b. Are corrected data entry errors still listed as violations? Alternatively, are the violation notices removed when the data are corrected?
c. Specifically, what is EPA's process for evaluating violations based on corrected data entries?
d. What opportunities does the regulated community have to abate minor violations like paperwork or clerical errors made in good faith?

Response: ECHO is an agency tool that provides public access to compliance and enforcement information reported by EPA, state, local, and tribal regulatory agencies into the EPA national data systems of record for the media-specific programs (e.g., air, water, hazardous waste). The type of compliance monitoring and enforcement data reported to the underlying data systems are defined on a media-specific basis in consultation with our regulatory partners. To provide consistency within programs, guidance addresses issues such as what information needs to be reported nationally, the frequency of reporting, the timeframe for data entry, and how to correct data errors. If a regulatory agency identifies a data error that resulted in a violation listing, the delegated/authorized agency (i.e., the EPA, or state, local, tribal agency) has the ability to edit the data in the underlying data system of record. That change will be reflected quickly in ECHO since most of the data in ECHO is updated weekly.

The enforcement response to address reported violations also is defined on a media-specific basis, and the related guidance provides flexibility in how to address the violations depending on factors such as their severity, duration, impact on human health and the environment.

The EPA has provided a number of opportunities and options for companies to quickly and easily come into compliance. For example, under EPA's Small Business Compliance Policy

(65 Fed. Reg. 19,630. Apr. 11, 2000), the EPA will waive or greatly reduce penalties for small businesses that identify and correct any noncompliance they discover.

The agency also recently created a centralized web-based "eDisclosure" portal (80 Fed. Reg. 76,476, Dec. 9, 2015) to receive and automatically process self-disclosed civil violations of environmental law, which allow large and small businesses to be able to quickly get some of their more routine types of disclosures resolved. While the EPA is primarily focused on addressing violations that expose communities to excess levels of pollution, the agency also recognizes the importance of ensuring that the regulated community provides accurate and complete information when required under the nation's environmental laws. For example, enforcement policies provide for the issuance of administrative notice to a company to correct or revise a report. EPA's enforcement program also uses "Expedited Settlement Programs" for regulated parties to address minor violations that can be quickly corrected and that do not cause significant health and environmental harm, in lieu of more formal traditional enforcement.

21. EPA's ECHO data system currently only presents a facility's Clean Air Act status as either "In Violation" or "Not Available" for facilities across the nation. State environmental agencies have spent significant resources to provide accurate data on a facility's compliance status.

a. Why has EPA been unable to update this data display issue to ensure that, when facilities are in compliance, their data on ECHO states they are in compliance?
b. Similarly, why hasn't EPA updated ECHO displays to prevent a single day late report being shown as a full quarter or six months of non-compliance in the system?

Response: ECHO is an agency tool that provides public access to compliance and enforcement information reported by the EPA, state, local, and tribal regulatory agencies into EPA national data systems of record for the media-specific programs (e.g., air, water, hazardous waste). The term "Not Available" is no longer used in reference to the CAA program. The agency is working with our regulatory partners to determine how to best capture information on violations and best summarize and display information on a facility's compliance status in ECHO. While the agency is working with our partners, the CAA section of the multi-media table "3-Year Compliance Status" has been noted that the section is "Under Development", and in the "Enforcement and Compliance Summary" it is noted whether a violation has been identified within the past one year.

22. According to EPA's Next Generation Compliance Strategic Plan for 2014 to 2017, your office will enhance ECHO by making facility environmental performance information and real-time monitoring data available. Will this effort help reduce the current number of inaccuracies in the ECHO database?

a. Are there ways to identify potential inconsistencies in the new data from what is already included in ECHO?
b. Can the Next General Compliance data help identify and accelerate the correction of preexisting errors in the ECHO database?
c. What types of errors are possible with the addition of data from the Next

Generation Compliance effort?

d. Will EPA's Next Generation Compliance Strategy help eliminate or at least reduce the ECHO database inaccuracies that the public sees?
e. How will the data collected under the Next Gen enforcement initiative be included in the ECHO database?

Response: EPA, state, local, and tribal regulatory agencies report compliance and enforcement data into the EPA national data systems of record for the media-specific programs (e.g., air, water, hazardous waste).

The Next Generation Compliance Initiative does not create new data reporting requirements. Data that is entered into the national data systems of record will continue to flow to ECHO during the weekly data update process. Continuous process improvements will help to further improve data accuracy. For example, the conversion from paper reports to electronic reporting will improve data quality since data quality and edit checks are designed into electronic reporting systems. Real time monitoring data is becoming increasingly available and will improve data quality.

23. What role do states have in the Next Generation Compliance Initiative?

a. How much of the data included in the initiative will come from state databases?
b. Do you expect states to rely on this data in enforcing federal laws to the extent they are delegated states?
c. How are states reacting to the Next Generation Compliance program?
d. Will lack of state participation limit the reach of Next Generation Compliance in those states? How will it affect facilities and communities?
e. What training efforts do you have underway with states?
f. Do states currently have the technical resources and capabilities to be partners?

Response: The EPA has met with 20 states and local agencies to discuss Next Generation Compliance and opportunities for collaboration. The EPA has conducted additional outreach through ECOS, and state air, water, and waste associations. States and local governments have been receptive to the Next Generation Compliance concepts and the EPA has offered to work with states on projects to develop approaches to compliance with state and local requirements that are more efficient and effective.

Although resources are limited for many of these agencies, the EPA anticipates that Next Generation Compliance can be used to help identify tools that promote compliance in a cost-effective manner. For example, electronic reporting requires an upfront investment, but ultimately saves state and, tribal, and local governments time and resources. It also improves outcomes for industry by eliminating opportunities for data errors, while creating opportunity for greater transparency. While Next Generation Compliance encourages the use of tools such as advanced monitoring and electronic reporting, it does not require any additional collection of data at the state or federal level.

24. There is significant concern over EPA's proposed use of advanced monitoring devices, such as portable air quality sensors, in determining compliance with regulations that did

not anticipate the use of these new monitoring devices. A key aspect in evaluating the achievability of a new rule is determining how the standard will be enforced.

a. Is EPA intending to apply these new data collection approaches to existing standards, or only to standards where they have been discussed and evaluated as part of the rulemaking process?
b. How many of the new monitoring approaches included in the Next Generation Compliance Strategy have been field-tested?
c. How do you evaluate their reliability?
d. How is source attribution determined with fence-line and portable monitoring equipment?
e. What are the potential security risks posed by the making this expanded data set available to the public?
f. What are you doing to assure that the increased emphasis on data sharing and third-party audits will not result in increased security risks for facilities and workers?
g. Does EPA expect the use of these devices to impact the kind of data collected through future Information Collection Requests ("ICRs")? If so, how?

Response: While there are many new technologies made available every year, when a new technology becomes available and is contemplated for use to meet the requirements of a rule, the EPA uses detailed review processes to determine the appropriate use of the technology. These processes have been in place for many years as new monitoring technologies have become available. For emerging technologies that are not yet ready for formal review and approval, or can be used in ways that do not require such approval (e.g., early pollutant screening for possible further investigation), the EPA may conduct early screening and field tests, regulated parties may suggest and agree to use new technologies, pilots may be conducted to evaluate the accuracy and potential use of new technologies or collaborations may be conducted with states, research institutions, or communities to try new technologies. These analyses and tests regularly include issues such as reliability, accuracy, data sharing, and other associated parameters.

25. What is EPA's decision-making process for whether to impose fines on companies that have self-reported and voluntarily corrected violations?

a. Do you believe imposing large fines on companies who have voluntarily self-reported and corrected mistakes is conducive and constructive for building a collaborative relationship between the EPA and regulated entities?
b. What incentive does the regulated community have to work with EPA if the result of self-reporting is a larger fine?

Response: Self-reported and voluntarily corrected violations are eligible for substantial penalty reductions under EPA's enforcement policies. Under both the "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (Audit Policy - 65 Fed. Reg. 19,618, Apr. 11, 2000) and the "Small Business Compliance Policy" (65 Fed. Reg. 19,630, Apr. 11, 2000), civil penalties for self-reported violations can be substantially reduced or waived in their entirety. Over the past 20 years, thousands of small and large companies have worked with the EPA to resolve violations at more than 16,000 facilities,

over 90% of which have been resolved for $0. In those few instances where a penalty is assessed, in order to help maintain a level playing field for competitors that have complied, the penalty is generally only to recoup the economic advantage a company gained over its competitors by delaying its investment in compliance. In December 2015, EPA further improved implementation of its self-disclosure policies by creating a centralized web-based eDisclosure portal to receive and automatically process self-disclosures from large and small businesses, saving enormous time and resources for the regulated entities and EPA.

26. What is EPA's decision-making process when it comes to selecting companies to audit or inspect?

a. Are there any specific internal processes or guidelines used to determine which facilities are to be audited or inspected?
b. How will EPA determine which facilities to inspect when enforcing its new NEI for reducing risks at chemical facilities?

Response: Inspections are an integral part of EPA's compliance monitoring programs. They are an important tool for assessing compliance with environmental regulations and permit requirements. EPA's regulatory partners (e.g., the states) conduct the vast majority of inspections conducted across the country under the various environmental statues.

EPA uses a number of factors in identifying facilities to be inspected, including for example:

- Analysis of data to determine facilities with violations or to identify national concerns;
- Statutory requirements regarding the type and frequencies of inspections, and media-specific Agency compliance monitoring strategies;
- Strategic planning such as the National Program Managers Guidance, discussions with states on program priorities, and state grant guidance;
- Environmental justice concerns;
- Information about potential violations that may be occurring.

In addition, EPA's National Program Managers Guidance, which is developed together with our state and local partners and updated every two years, also includes facility inspection approaches as part of EPA's strategic planning process for implementing the National Enforcement Initiatives (see https://www.epa.gov/planandbudget/national-program-manager-guidances).

27. EPA's most recently finalized NEI for FY2017-2019 added "Reducing Risks of Accidental Releases at Industrial and Chemical Facilities" as a new initiative.

a. As a part of this initiative, does EPA intend to enforce the General Duty Clause of section 112(r) of the Clean Air Act? If so, has EPA taken steps to define the term "extremely hazardous substances"?
b. Has EPA taken any steps to create any EPA-wide policies or guidelines with respect to the definitions of terms used in the General Duty Clause?

Response: The General Duty Clause (GDC) imposes a requirement that facilities operate safely. While Congress expressly required the EPA to issue a list of substances and thresholds to implement the RMP requirements of CAA 112(r)(7), it intentionally left the substances potentially covered by the CAA GDC open-ended. The explanation at the time of enactment was that extremely hazardous substances would include, but are not limited to the list of substances covered in the risk management plan requirements and all extremely hazardous substances identified under the Emergency Planning and Community Right-to-Know Act, and "other agents which may or may not be listed or otherwise identified by any Government agency" that may cause death, injury, or serious property damage in an accidental release (Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Report No. 228, 101st Congress, 1st Session 211 (1989)). The Senate provided further guidance by saying that "the release of any substance which causes death or serious injury or which causes substantial property damage would create a presumption that such substance is extremely hazardous" (Id.) (emphasis added).

Because the hazard posed by a substance depends upon the conditions of use and because those conditions may vary greatly, it would be advisable or appropriate to develop a definition that would capture all possible conditions and uses. The EPA has implemented the GDC consistent with this intent. EPA has provided policy and guidance on the GDC. In particular, in May 2000, the EPA issued "Guidance For Implementation Of The General Duty Clause Clean Air Act Section 112(r)(1)" that discusses the term "extremely hazardous substance," among others.

28. A recent news article criticized EPA's handling of the money received from Superfund settlement agreements, calling them a "slush fund" with little transparency or accountability.

a. What is EPA doing to address these concerns and increase the transparency and accountability for Superfund special accounts?
b. How do you keep consistency among the regions, maintain cooperative relationships with state regulators, and avoid these problems in the future?

Response: Pursuant to the statutory authority provided by CERCLA § 122(b)(3), and the terms of specific settlement agreements with potentially responsible parties, the EPA uses special account funds to finance site-specific CERCLA response actions at the site for which the account was established. Funds collected under settlements are intended to finance future cleanup work at particular sites over the short and long-term.

The EPA has made significant efforts to increase transparency of special accounts, including providing additional information about special accounts on the EPA website. Over the past several years, the EPA has responded to GAO, OIG, Congressional, public, and press inquiries regarding special accounts, including creating and modifying its annual report on special accounts to Congress in EPA's annual "Congressional Justification" in response to specific requests from the OIG and Congress.

The EPA conducts short and long-term planning for the use of funds in individual special accounts, and reviews these plans on a semi-annual basis to account for any changes to site

conditions, resources, contractual considerations, or other factors. The EPA will continue to provide information and transparency to our stakeholders regarding the use of special account funds while balancing the need to maintain confidentiality of certain data so as not to jeopardize future enforcement and procurement actions.

In response to the OIG's report, "Improved Management of Superfund Special Accounts Will Make More Funds Available for Clean-ups" (March 2009), the EPA created the Special Accounts Senior Management Committee (Committee), comprised of senior managers across the agency responsible for the management and use of special accounts, to provide guidance and oversight over the EPA's use of special accounts. The Committee meets at least semi-annually to discuss the current status of special accounts.

29. One of the many problems encountered by the Renewable Fuel Standard (RFS) has been Renewable Identification Numbers (RIN) fraud, the generation and sale of RINS that are invalid and are not tied to any renewable fuel actually produced. Once RINs are found to be fraudulent, those obligated parties that used the RINs for compliance may have to replace those invalid RINs. In an effort to alleviate RIN fraud EPA established a quality assurance program for verifying the validity of RINS under the RFS. However, recent EPA enforcement work with the Department of Justice illustrates valid RIN generation remains a concern.

a. What compliance monitoring takes place in regard to the RFS, and specifically RIN generation?
b. Can you tell us if instances of RIN fraud are decreasing or increasing?

Response: Ensuring the integrity of the RFS program remains a high priority for the EPA. The program structure includes compliance monitoring through RFS stakeholder involvement to monitor the program, a third-party Quality Assurance Program (QAP) that enables private industry to monitor and help ensure fuel is compliant, and a sophisticated database system that tracks and monitors renewable fuel credits. Enforcement, both civil and criminal, against those individuals who have fraudulently produced RINs, continues to be important to ensuring the integrity of the program. Criminal and civil enforcement deters future fraudulent activity.

30. EPA's National Environmental Justice Advisory Committee has called for state plans developed under the Clean Power Plan (CPP) to include resource-intensive analyses on environmental justice (EJ) effects. At an October 2014 meeting of this Advisory Committee, Administrator McCarthy suggested the Agency would not include such a requirement with the CPP, but hinted they may impose this requirement for state implementation plans (SIPs) under the revised ozone National Ambient Air Quality Standards (NAAQS). As you know, states are still implementing the 2008 ozone NAAQS and they are now conducting duplicative activities for the 2015 update. EPA will be releasing its rule for SIP requirements under the 2015 standard this fall.

a. Since your office houses EPA's Office of Environmental Justice, what has been your involvement in any plans to require states conduct EJ analyses?

b. Can you commitment that EPA will not require states to develop a separate EJ analyses with their state plans? If not, under what statutory authority is EPA able to require states to include this type of analyses?
c. What is EPA's definition of environmental justice?

Response: The EPA works to address, as appropriate, any disproportionate impacts of its programs, policies, and activities on EJ communities as directed by E.O. 12898. For example, the agency has made significant progress in incorporating EJ considerations into our rulemaking efforts. A number of states are also interested in avoiding disproportionate impacts, and are conducting analyses of their own to identify areas of concern.

In the recently finalized implementation rule for the 2012 National Ambient Air Quality Standards (NAAQS) for PM2.5, the EPA encouraged states to conduct EJ analyses and include EJ communities in the SIP development process. The agency also made suggestions for states' consideration regarding where they might target emissions reductions in EJ communities as they are developing their attainment plans.

As noted in the question, the EPA intends to release a proposed rule this fall in which the agency will address a range of implementation requirements for the 2015 National Ambient Air Quality Standards (NAAQS) for ozone, including the nonattainment area classification system, and the timing of State Implementation Plan (SIP) submissions. It will also discuss and outline relevant guidance on meeting the Clean Air Act's requirements pertaining to attainment demonstrations, reasonable further progress, reasonably available control measures, nonattainment new source review, and emission inventories. Other issues addressed in this proposed rule are the potential revocation of the 2008 ozone NAAQS and anti-backsliding requirements that would apply if the 2008 NAAQS are revoked. Similar to the PM2.5 implementation rule, the EPA anticipates that the proposal will not include EJ analysis requirements, but will encourage states to meaningfully engage EJ communities in the SIP process and consider addressing ozone precursors in EJ communities where appropriate.

The agency will keep the Committee updated on the status of this proposed rule and can address specific questions regarding the proposal once it has been released for public comment.

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Information on EPA's environmental justice efforts can be found at: https://www.epa.gov/environmentaljustice

31. In February the U.S. Supreme Court issued a stay on implementation of EPA's Clean Power Plan (CPP). While there is no dispute the stay puts a hold on enforcement of the CPP, EPA has maintained it can continue work towards implementation and assist states that want to develop compliance plans.

a. Given that your office is responsible for both enforcement *and* compliance assistance, what level of compliance assistance is your office providing states related to the CPP?
b. Aside from the likelihood that the rule may ultimately get struck down by the Courts, why would you dedicate your office's resources on a rule that is in squarely not in effect? Is it not a priority for your office to enforce and provide assistance with active rules?
c. When rules in the past have been stayed by the courts, what is your office policy on providing compliance assistance to entities that want to move forward anyway?

Response: On February 9, 2016, the Supreme Court stayed the Clean Power Plan (CPP) pending judicial review before the U.S. Court of Appeals for the D.C. Circuit and any subsequent proceedings in the Supreme Court. The EPA firmly believes the Clean Power Plan will be upheld when the courts address its merits because the Clean Power Plan rests on strong scientific and legal foundations. The stay means that no one has to comply with the Clean Power Plan while the stay is in effect. During the pendency of the stay, states are not required to submit anything to the EPA, and the EPA will not take any action to impose or enforce any such obligations.

Since the stay was issued, many states have said they intend to move forward voluntarily to continue to work to cut carbon pollution from power plants and are seeking the agency's guidance and assistance. The agency will be providing such assistance, which is not precluded by the stay. In particular, some states have asked to move forward with outreach and to continue providing support and developing tools, including the proposed design details for the Clean Energy Incentive Program (CEIP). The agency will move forward in a way that is consistent with the stay while providing states the tools they have asked for to help address carbon pollution from power plants.

32. On June 30, EPA's proposed Clean Energy Incentive Program (CEIP) was published in the Federal Register. The CEIP is a key part of EPA's implementation of the Clean Power Plan (CPP), despite the U.S. Supreme Court's stay on the CPP. Given that your office participates in regulatory workgroups to provide input on implementation and compliance for developing actions, what advice did your office provide on the proposed CEIP?

Response: EPA's Office of Enforcement and Compliance Assurance participated in the workgroup, led by the Office of Air and Radiation, which developed the CEIP proposal. OECA's input is reflected in the proposal that was released in June 2016.

33. At the hearing I asked you about former EPA Region 6 Administrator Dr. Al Armendariz's 2010 remarks to local business and government leaders in which he said EPA's "general philosophy" on enforcement is to "crucify" and "make examples" of oil and gas companies. Since his resignation, has your office done any review of enforcement actions authorized by Dr. Armendariz?

Response: As you are probably aware, Dr. Armendariz acknowledged in 2012 that his 2010 remarks, which were made shortly after his appointment as Region VI Regional Administrator in late 2009, did not reflect the efforts by Region VI to address potential violations of the nation's environmental laws during his tenure. Further, both the EPA Administrator and the White House also stated that that the 2010 remarks were an inaccurate characterization of the work that EPA does. In addition, because OECA meets regularly with all regional enforcement managers throughout the year to review each region's ongoing and planned enforcement activities, as well as with the Department of Justice on civil judicial matters, a separate review of Region VI's enforcement actions was not necessary.

34. Mr. Don Grube from Durant, OK, sells small engines and his business is being harmed by the fact that the Office of Enforcement and Compliance is not fully enforcing relevant air emissions standards. Mr. Grube spends about $25,000 every two years getting his engine emissions lab tested and certified per the EPA requirements. When OECA fails to enforce the regulations on the books, he cannot compete and the bad actors in the field are rewarded. Can you follow-up regarding Mr. Grube's complaint? What is the penalty for importers who sell small engines in this country that do not comply with air emissions standards?

Response: The EPA is actively enforcing the Clean Air Act requirements for small gasoline engines. This includes inspections and civil penalty actions for engines being illegally imported into the country. On matters concerning importations, the EPA works in close collaboration with the U.S. Department of Customs and Border Protection. Resolved enforcement cases are found at: https://www.epa.gov/enforcement/clean-air-act-vehicle-and-engine-enforcement-case-resolutions. The Act, as adjusted for inflation, provides for maximum civil penalty of just over $44,000 for each engine that is imported in violation.

The EPA has spoken with Mr. Grube numerous times and provided appropriate information. However, consistent with EPA policy, the agency did not provide information on prospective and ongoing enforcement cases.

35. Continental Carbon Company (CCC) is one of five companies that produce carbon black in this country. In February, the company entered into a now public consent decree with EPA under the explicit expectation that all other producers of carbon black would be held to the same standard. Over the past few years the company spent $8 to 10 million on legal fees and a couple thousand man hours obtaining data, filing reports and interacting with EPA and DOJ just to get to the decree. To date, only 2 of the 5 companies have been required to make the resulting types of technology investments. From June 28 staff phone call with CCC President: "We are not and have never been opposed to reducing emissions at our facilities … we simply request industry standards are applied in a fair and consistent manner." Why did EPA choose to pursue an enforcement initiative instead of a formal rulemaking if the net result, installing emission control technology, is the same? What is EPA doing to ensure imported carbon black, particularity from Russia and China, are held to the same environmental standards the Agency is enforcing upon domestic producers?

Response: The EPA has an ongoing initiative to bring all of the carbon black companies operating facilities in the U.S. back into compliance with the New Source Review provisions of the Clean Air Act.

Senator Rounds

1. Ms. Giles, at the hearing I requested an inventory of the Agency's information request letters submitted under Section 114 of the Clean Air Act for the last ten years. Please provide such inventory to the Committee and specify the following:
    a. The date Section 114 request was sent;
    b. The NAICS code and city and state location for the recipient;
    c. The title and office of the authorizing EPA official;
    d. The deadline for response;
    e. The basis for the letter, including the specific Clean Air Act provision (other than Section 114) and regulation, under which the information was being sought;
    f. Whether the relevant State environmental agency was provided a copy of the Section 114 request upon its issuance;
    g. Whether the relevant State environmental agency was provided a copy of the information obtained in response to the Section 114 request;
    h. Whether the recipient of the Section 114 request claimed any information provided to EPA as confidential business information or trade secret;
    i. Whether EPA provided access to the information obtained in response to the Section 114 request to any third-party, including an EPA contractor;
    j. Any subsequent Agency enforcement action(s) taken against the recipient as a result of such letter, including penalties and/or fines or notices of violation based on the information obtained in response to the Section 114 request, the date such action was taken; and
    k. Any subsequent Agency regulatory action(s) which were based, in whole or in part, on information obtained in response to the Section 114 request.

Response: Section 114 of the Clean Air Act (CAA) provides the EPA with authority to gather information to assist the agency in implementing the Act, which includes developing regulations and determining compliance at specific facilities to protect public health and the environment. The agency uses CAA Section 114 letters to investigate concerns that may require attention and the responses to these letters are evaluated to determine if further action is needed. Because these letters are not uniformly reported in a centralized system, the agency is not able to provide the detailed inventory requested.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT - 3 2016

OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

The Honorable John Shimkus
Chairman
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Shimkus:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Subcommittee's questions for the record following the July 13, 2016, hearing titled "Oversight of CERCLA Implementation."

If you have further questions, please contact me or your staff may contact Carolyn Levine in EPA's Office of Congressional and Intergovernmental Relations at levine.carolyn@epa.gov or (202) 564-1859.

Sincerely,

Tristan Brown
Deputy Associate Administrator

U.S. Environmental Protection Agency
Responses to Questions for the Record
Hearing: "Oversight of CERCLA Implementation"
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
U.S. House of Representatives
July 13, 2016

1. **(Shimkus) What is EPA Headquarters doing to ensure that technical recommendations from the National Remedy Review Board and the Contaminated Sediment Technical Advisory Group are being followed and incorporated in remedy decisions made by the Regions?**

   Response: All National Remedy Review Board (NRRB) and Contaminated Sediment Technical Advisory Group (CSTAG) recommendations are advisory recommendations rather than requirements. For sites the NRRB reviews, the regional Superfund division director provides the regional response memorandum. The NRRB chair reviews the draft proposed plan and draft record of decision (ROD) for each site to ensure recommendations have been addressed as stated in the regional response memorandum.

   The CSTAG usually meets with the region on multiple occasions throughout a major sediment project. The regional remedial project manager provides the responses to the CSTAG's questions and recommendations. The CSTAG chair and the headquarters sediment team review the draft proposed plan and draft ROD.

   Concerns that the NRRB or CSTAG identify may be elevated to regional and headquarters management for resolution.

2. **(Shimkus) Does the National Contingency Plan and the Sediment Guidance require EPA to use adaptive management?**

   Response: Neither the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) nor the Sediment Guidance require adaptive management. The 2005 Contaminated Sediment Guidance states that "project managers are encouraged to use an adaptive management approach, especially at complex sediment sites, to provide additional certainty of information to support decisions."

   a. **Why haven't we seen more adaptive management in recent remedy decisions at sediment megasites?**

      Response: Superfund cleanups frequently incorporate adaptive management elements, however, remedial activities may not expressly identify those elements as "adaptive management." For example, most complex contaminated sediment sites are phased with early actions, source control actions and/or river segment-based operable units--all approaches are consistent with the general principles of adaptive management.

Some site-specific examples include: the Tittabawassee River site in Michigan that has river segment response actions moving downriver; the Fox River site in Wisconsin that has a contingency component that facilitated a set of changes in the remedy; and Berry's Creek in New Jersey that has an iterative approach that addresses sediment source areas while collecting additional information to reduce uncertainties associated with other portions of the site. While adaptive management can be beneficial, it also can, depending upon site specific circumstances and conditions, delay a remedy decision or an outcome that the EPA and site stakeholders (e.g., a state, tribe, local community, or Potentially Responsible Party, etc.) may prefer.

3. **(Shimkus) There is concern that EPA's rulemaking under section 108(b) will duplicate and intrude on effective state financial assurance programs. EPA's posture with respect to preempting State financial assurance seems to be that because section 108(b) directs EPA to establish financial assurance for liability under CERCLA section 107 whereas State financial assurance programs do not, that the 108(b) rule will not duplicate State financial assurance.**

   a. **Does EPA acknowledge that financial assurance provided under a State program may mitigate CERCLA response costs and if so, how does the Agency plan to take that into account when promulgating the rule?**

   Response: Under CERCLA Section 108(b), Congress directed the EPA to develop financial responsibility requirements consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. A key purpose of such requirements is to ensure that owners and operators of facilities make financial arrangements to address the risks to public health and the environment posed by hazardous substances at their sites.

   EPA's CERCLA section 108(b) financial responsibility regulations are intended to ensure that sufficient funds are available to pay for CERCLA liabilities. Unlike state or federal programs that currently exist, the section 108(b) regulation will not impose design, construction, or operating standards for hardrock mines. EPA's forthcoming CERCLA 108(b) rules should not be duplicative of existing state, local, tribal or federal mining reclamation and closure requirements.

   During the proposed rule's development, the agency has undertaken extensive outreach to the financial industry, small businesses, and the regulated community. EPA has also interacted with states and other federal agencies that regulate the mining industry on several occasions during its work on the proposal. We have found these interactions to be very helpful and have used input from these discussions to inform our rulemaking approach.

   The EPA plans to seek comment from all stakeholders on the proposed rule, including on the use of all the financial responsibility instruments identified in CERCLA Section 108(b) which includes insurance, guarantees, surety bonds, letters of credit, and qualification as a self-insurer. The EPA plans to include in its

proposal for comment the opportunity for facilities to address financial responsibility by demonstrating adequate self-insurance which is commonly referred to as a "financial test."

The agency is currently developing a formula to be used by owners and operators of hard rock mining facilities to determine the applicable financial responsibility amount that would be required under the proposed rule. The EPA is considering how that initial amount might be adjusted to reflect reductions in risk that result from site-specific factors. Under consideration are two categories of reductions to the financial responsibility amount: reductions based on the impacts of controls currently in place at the facility, and reductions based on the potential impact of enforceable controls not yet in place that are also assured for by existing financial responsibility instruments such as those required by state bonding programs. In this way, the EPA intends to take into account the impact that state requirements may have on reducing risk.

Other federal agencies, including the federal land management agencies, will also have an opportunity to participate in the review and evaluation of the financial responsibility formula before it is released for public comment. Further, the financial responsibility formula will undergo an external, independent scientific peer review. Opportunities for broad public comment will be provided through the rulemaking process as the proposed rule will be published in the Federal Register. All comments submitted during the public comment period will be considered when the EPA prepares the final rule.

In addition, the EPA has prepared a market study that examines both the current state and future outlook of the markets for financial responsibility instruments based on publically available and attributable data (from sources such as the Department of the Treasury, the Government Accountability Office, Standard & Poor's, industry, and non-profit institutions).

b. Please provide us with the underlying formula for the rule so that we can better assess and understand this important issue.

Response: The EPA is continuing to develop the formula for determining site-specific financial responsibility amounts for facilities under the proposed CERCLA 108(b) rule for hardrock mining. The formula will be available for public comment with the proposed rule which is expected to be signed by December 1, 2016. As part of the Small Business Regulatory Enforcement Fairness Act (SBREFA) process, the agency prepared a list of the major formula components under development: the response component, the health assessment component, and the natural resource damage (NRD) component, as well as example runs of the current version of the formula applied to 11 small business mines that reflect the breakouts combined with the fixed health assessment cost and multiplied by the NRD percentage.

4. (Shimkus) EPA is under court order to complete its rulemaking under CERCLA section 108(b). I understand that EPA has "developed a formula that would

identify an amount of financial responsibility to reflect the primary site conditions and characteristics that would affect the costs of removal or remedial action."

a. What data has EPA used to develop that formula?

Response: The EPA identified common activities undertaken at 88 mining sites on the National Priorities List (NPL) using data from the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS), Integrated Financial Management System (IFMS) and EPA's Office of Enforcement and Compliance Assurance settlements database to identify activities thought to be relevant to CERCLA responses at hardrock mining sites. The EPA then estimated the current costs of these activities based primarily on data from modern situations. Modern cost estimates are based on a representative sample of 63 currently operating (as of 2015) hardrock mining facilities with publicly available engineering cost estimates that contained costs specific to the relevant activities and supplemented with data from three historical sites for water treatment costs (to achieve an adequate sample size for this component).

b. I assume EPA had a list of the mines or mining sites that were used to develop the formula -please provide that list for the record.

Response: As discussed above, the EPA is incorporating a range of data in the development of the formula. The agency identified past activities undertaken by the Superfund program at hardrock mining facilities as the basis for incorporating response costs into the formula, then estimated the current costs of those actions based primarily on data from modern situations. The EPA is developing a formula that will allow owners or operators to enter facility-specific data to obtain a financial responsibility amount including adjustments to reflect reductions in risk from existing site controls or yet to be implemented controls assured by existing financial responsibility instruments. The EPA continues to develop the formula and the associated record for inclusion with the proposal, which the agency can provide when the rule is proposed.

5. (Shimkus) Why is EPA spending Superfund dollars on a proposal to add a subsurface intrusion pathway to the Hazard Ranking System, thereby potentially leading to additional NPL listings, when EPA has failed to identify actual sites where subsurface intrusion is not being addressed because the site could not be listed on the NPL?

Response: Over the years, the EPA has identified several priority sites with significant subsurface intrusion (SsI) contamination and risk of exposure to residents. Several of these sites were used as test sites in the proposed rule to support the proposal to add an SsI component to the Hazard Ranking System (HRS). The EPA used sampling data and other HRS data inputs to confirm that these sites would not score sufficiently high under the existing HRS pathways to qualify for the NPL without the addition of an SsI component.

The HRS addition is not expected to result in either an increase in the number of site assessments per year or in the placement of more sites on the NPL per year. Rather, the make-up of sites in any given listing will be shifted to now include SsI sites in addition to traditional groundwater, soil, and air sites as the EPA expects that there will be a realignment and reprioritization of its site assessment funds to address priority SsI sites with suspected human health risks. With this HRS update, the EPA will now have an additional mechanism to address sites posing the greatest risk. Further information regarding the EPA's scoping of the potential site universe can be found in the preamble to the proposed rule at: https://www.gpo.gov/fdsys/pkg/FR-2016-02-29/pdf/2016-02749.pdf\.

6. **(Shimkus) When matters are before the National Remedy Review Board, why are project sponsors not given access to all materials submitted from the Region so that the Remedy Review Board can get a response from project sponsors that addresses all points the Region is using to justify its remedy proposal? Wouldn't enabling a full response from project sponsors, based on all information from the Region, foster the best possible decision-making by the Board?**

Response: The EPA offers the Responsible Parties (RPs) an opportunity to summarize in writing, 20 pages or less (up to 40 pages for sites where the estimated remedial action costs exceed $100 M) any technical issues they believe are pertinent to the cleanup decision, including their recommended approach and rationale for that approach. However, the NRRB considers the review to be an internal, deliberative, pre-decisional and (in certain cases) enforcement-sensitive process. The NRRB and its current process do not alter existing mechanisms for RP involvement in the remedy selection process. The current process allows the RPs to work closely with the agency in conducting the remedial investigation and feasibility study, including appropriate, periodic meetings between the EPA and the RPs to ensure that issues such as site characterization, treatability of contaminated media and the feasibility of different remedial options are fully considered.